

SUPPLEMENTARY
O B S E R V A T I O N S
UPON THE
P R O C E E D I N G S
OF THE
HOUSE OF ASSEMBLY
IN THIS PROVINCE.

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Supplementary Observations, &c.

UPON reconsidering the former Observations, it has occurred, that utility might result from giving them a wider range, so as to comprehend some anterior proceedings of the Assembly, as well as to embrace others not noticed in these Observations, and to make such remarks upon the whole subject, as present circumstances require.

The system of encroachment upon the powers & functions of the other constituted authorities, did not originate with the last House of Assembly, although they carried usurpation to an extent beyond any preceding one.

During the administration of the former Governor, an attempt was made to expel a Judge from the Lower House, and to disqualify him & all judges from election to a seat therein, upon the simple authority of the House, without participation of the other branches; merely because the said judge was personally obnoxious to the then

prevailing party in the House : a leaven from each party has entered into each succeeding House, but has been more conspicuous in the last session, where a more than ordinary part of the whole batch was thrown into a state of violent fermentation.

The Governor at that time, very properly dissolved the house, seeing the danger that must necessarily result from so daring a precedent, as an assumption of power, which in its consequences would lead, if unresisted, to the *Lower House* establishing by its fiat, the right of qualification to a seat in that House, instead of being governed by the *Constitutional Act*, which expressly declares who are capable of election, and wherein, after excluding certain descriptions of persons from being elected, it is added in the 23d clause thereof, "or who shall be without in any description of persons disqualified by any act of the *Legislative Council and Assembly of the Province*, assented to by his Majesty, his Heirs and Successors."

Thus it is manifest, that the Assembly possessing such power, and that the constitutional act conveys the right of making further disqualifications than were therein expressed, *only to the Provincial Legislature at large*.

The new House which succeeded to the one dissolved as above said persisting in their usurpation of the right of disqualification, was also dissolved, when the Governor unfortunately was instructed to signify that he would in the King's name assent to the disqualification of Judges from sitting in the *Assembly*, if a Bill for the same, should con-

constitutionally receive the consent of the other branches of the Legislature.

The word *unfortunately* is here used, because, that although it preserved the constitutional check of the different branches upon their respective Legislative powers, and thereby in fact became a record of the usurpation before attempted by the Assembly;—yet it gave the turbulent members an idea, that what could not be yielded as a matter of right, might be relinquished to persevering clamor—hence a kind of incitement to the attempt at exclusion of the Judges from the Legislative Council, by a Provincial Legislative act, in the very teeth of the Royal Perogative as well by the *British Constitution*, as by the express provision of the Constitutional act, respecting the right of His Majesty to summon to the Legislative Council such persons as he shall think fit—as has been before mentioned.

Some of the leaders in the Assembly cannot have been ignorant of the incompetency of the Provincial Legislature to pass such an act, but in considering the manner whereby the precedent of the assent of his Majesty to the act for disqualification of Judges from seats in the Lower House was obtained, may have thought, that if they served up the same dish each subsequent session, still more highly seasoned with clamor, that perhaps the King would wave his rights, and the Imperial Parliament in consequence, pass an act upon the subject—or if not that it would be a nice cloak for further irritation; and in the mean time the Bill passed by the Assembly, if rejected in the other House, would by a sapient resolve, bottomed on the

the newly discovered patriotic logic, convert such rejection into a proof of the necessity of the Bill—Such discovery is so truly original, that there is not the most distant risk of their being robbed of the merits of being the real inventors, and a patent right thereto, can hardly be necessary.

Passing over the proceedings of former days, and reverting to those of the last Assembly, it cannot be forgotten that true to their principles of undervaluing the Legislative Council, they laid aside even that decency and delicacy which amongst men of character, is observable in common life ; and in their session before the last, sent a summons to the Clerk of that Council, to attend at the Bar of the Assembly, to be examined touching the publication and transmission of the Laws passed in the Session of Parliament which began in February 1812.

This summons was sent without previous notice being given to the Council thereof, or their consent thereto obtained, which is an indispensable parliamentary preliminary, no point being more clearly fixed, than that neither House can of right exercise jurisdiction over the other, or any member, officer, or servant thereof, as each branch being independant in authority, can claim no superiority ; now to have allowed of the right of summoning their officers, without previous notice and leave, would have been a direct admission by the Council of inferiority.

It however would be a waste of time to reason further upon

upon this point, for what gentleman in private life, would presume to send for the servant of another, and demand attendance for his purposes, without leave from the master.

The Legislative Council to the astonishment of all, after having passed strong and highly constitutional resolutions upon the subject of this marked usurpation and dis respect, then retracted, in so far as to submit thereto, by permitting their clerks to go to the bar of the assembly under the salvo of a protest or entry on their journals, which was communicated to the assembly, that such permission was given, *solely on account of the then danger of the country*, and not to be drawn into precedent.

Little do those know of the human mind who are unaware of the danger of a first concession of a point of right to a popular bcdy :—No, salvo can guard against its baneful effects.—Such a concession necessarily produces the necessity of more and greater concessions, whilst finally a stand must be made at some point, perhaps less defensible, and certainly under disadvantages greatly increased, by the vain and absurd idea, of placing established rights in a state of abeyance, to stand over to a more convenient season.

Popular usurpations, like *an avalanche*, appears small and feeble at the outset, but increases in its course, until finally its force becomes overwhelming and irresistible.

It unhappily is a fact, that the well meaning in all countries are the most supine ; and Lord Clarendon in

describing the period immediately preceding the great rebellion in the 17th Century, informs us, that " the weak contributed to the designs of the wicked, while the latter out of a consciousness of their guilt, grew by des-
paration worse than they intended to be. The wise were often imposed upon by men of small understand-
ings—the innocent were possessed with laziness, and slept under the most visible article of danger, and the ill-disposed, though of the most opposite interests and distant affections, united in a firm and constant league of mischief, while those whose opinions and interests were the same, divided into factions and emulations more pernicious to the public than the treasons of others."

The well dispos'd in this community should therefore awake from their stupor, and carefully watch over the attempts at increase of popular power ;—for the history of the last twenty years written in blood, shews to what an extreme of despotism, the delusions of factions, and abuse of the power of the people, leads. Mankind in Europe *now see and feel* that the only effectual remedy for such abuses, is in regal power, established upon the influence of property.

America has to undergo many trials and purgations before this precious truth shall be acknowledged ; and in this Province, we appear to be verging to that dreadful situation, where property, wisdom, and experience, will be considered as unnecessary qualifications for legislation ; and that those to whom none would confide the manage-
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ment of their private concerns, will be thought the fittest to fill situations where the public concerns shall be at their mercy.

Let not the present situation of this Province be lightly thought of.—The French revolutionary plague originated in appearances as little likely to produce the direful effects it did ; and although the bulk of this population be yet sound, there is a leaven gradually working by systematic deception, which may, if disregarded, pervade the whole lump at no very distant period.

In the session before the last, the Assembly attempted another usurpation, equally alarming, and which more immediately led to the late proceedings which were the subject of the former observations.

Under the pretence that it would facilitate an enquiry then making " into the causes and injurious consequences " that may have resulted from the delay in the publication of the Laws passed in the session of the Provincial Parliament, which began in February 1812," the assembly addressed the Governor " to cause to be laid before the House, a copy of the proceedings of the Court of Oyer and Terminer, held in and for the district of Montreal, in the months of August and September 1812, " transmitted to His Excellency, in pursuance of the 6th section of the Provincial statute of 34th Geo. 3, Chap. 6," and which was repeated in another address.

Now to what did this lead.—It led to establish two points

points of most dangerous tendency ;—first the destruction of the independency of the judiciary by the implied right thereby assumed of erecting the assembly into a Court of Revision of the proceedings of the Criminal Courts ;—and secondly it was a direct attack upon the undoubted rights of the Sovereign in that most precious of his prerogatives, as being the fountain of mercy.

To what purpose copies of these proceedings, if they did not claim the right of revisal of the sentences passed ;—and of interference with the exercise of the Royal right of pardon.

The inference is as clear as the Sun at noon day, and it will for ever furnish matter for regret, that the Governor in returning his answers to those addresses (for the House was not satisfied with one) left it doubtful whether he approved or disapproved of the prayers of the addresses, because a copy of the proceedings were refused on the ground of his not having been furnished therewith by the Judges.

What a pity that the first address was not met by a direct denial of their right to call for such papers, which when furnished, were for the guidance of the Representative of the Sovereign, in the application of the sole and undoubted right of the King to confer pardon upon criminals, and to judge of the propriety of refusing it.

The answers given were perversely construed by the House into an abandonment of the Judges, and preserved for use at a convenient season.

Accordingly next session (being the last one) the leaders of the Assembly tacked about all at once, by quitting the scent of the Pointe Claire and La Chine trials, and resuming with increased vigour the enquiry into the exercise of the powers of the Courts respecting Rules of Practice, begun the former session.

This astonished many, and especially as this enquiry was proceeded upon *in priority* to the great public objects connected with the defence of the province, recommended to their speedy attention in the Governor's speech at the opening of the session ;—and it will ever be matter of serious regret, that the Governor, in prosecution of his military duties, felt it necessary to leave Quebec at such a time, as the House availed itself of his absence, to mature their plans, and to persist in *that most extraordinary priority*, whilst the temper of the House under its discussions, speedily evinced that the object was not an improvement in the said Rules of Practice, but a cover for hunting down the whole Civil Government of the country, and rendering the Justiciary contemptible in the eyes of the public.

A stranger would naturally enquire, what were the public grounds upon which the enquiry and subsequent impeachment rested ? Was there any clamour of the people about corrupt judgments ? Were there any symptoms of dissatisfaction with the Courts previous to the institution of that enquiry ? Was the judicial character respected or despised ? To these and other questions of like import, 999 out of every 1000 in the province can answer,

by laying their hands upon their hearts, and saying, that there was nothing of all this, but quite the contrary.— Not a murmur or complaint against the Courts or Judges. Not an accuser of either appeared. The judicial character was venerated. Every one was satisfied, as far as losers of law suits can be, that the decisions of the Judges were pure, impartial, and incorrupt; and that if mistaken, the error lay in the imperfection of human nature, and not in any deficiency of the most correct intention.

It has been frequently remarked by our vain-glorious neighbours, on entering our Courts of Justice, that there was a dignity and regularity of procedure therein, to which their courts could lay no claim: and many of us must recollect, what a wonderful amelioration of our jurisprudence has ensued since the establishment of the present Courts of Law, when compared with those under the former constitution. Order has arisen out of chaos, and much of the improvement is deducible from the regular and permanent Rules of Practice, which have been introduced, and occasionally revised and amended by the Benches of each district, and the Provincial Court of Appeals. In short, our Courts, in purity of intention in the administration of justice, are not inferior to those of the mother country, although the talents cannot be expected to be alike.

Whoever aims at shaking the confidence of the people in the judicial authority, is a revolutionist at heart, and an enemy in disguise to the best interests of the country.

It was remarked by a learned divine, upon a most solemn occasion, that " one of the principal supports of national felicity arises from a wise and impartial administration of justice, every man reposes upon the tribunals of his country the stability of possession and the security of life :—He therefore who unjustly exposes the courts of Judicature to suspicion, either of partiality or error, not only does an injury to those who dispense the Laws, but diminishes the public confidence in the Laws themselves, and shakes the foundation of public tranquility."—

And the great Lord Mansfield profoundly observed to His Majesty, at a time when parties ran alarmingly high— " Sire, be not afraid of serious insurrection, whilst justice is administered to your subjects in purity in Westminster Hall "—The truth of this at that time was incontrovertible ; but if his Lordship could have foreseen that the demon of Jacobinism (a fiend then unknown) would arise, and be able to persuade the people, that such purity of administration would be injurious to their interests, by the judges attempting to prevent their exercise of the right of ruining themselves by endless Law-suits, to fill the pockets of Lawyers ; he would have gone a step further, and added " but if a corrupt faction shall be able to blind so far the eyes of the people, as to convert the purity of judicial administration into an engine of party delusion, then Sire, I must confess, that an attempt at revolution cannot be distant." This is what we are threatened with, and it behoves all who have property or principle to look well at our situation.—

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While upon the subject of the judiciary and the late impeachments, it cannot be too often repeated, that they were voted against the forms and substance of justice, in the absence of all proof, and that the meanest subject or most contemptible culprit, if his case be brought before a Grand Jury, on the accusation of the Attorney General, would be instantly liberated, if no witness, to prove the alledged criminality, was produced.—What would be thought of such a Jury, if upon a mere allegation of such Attorney, the Judges were addressed to punish the culprit.—Yet strange it is, that the late House of Assembly acted upon this principle in their address to the Governor, to punish the Chief Justices by suspension from Office—The case is thus put, that the injustice may be manifest to the meanest capacity.

Injustice and absurdity are so blended in the late procedure, that they contend for the mastery—The Chief Justices amongst other offences, are accused in the impeachments of treason, and yet they are to be carried before a tribunal (the king in his Privy Council) which has no judicial cognizance of treason, and consequently can neither try, convict nor punish for that high offence.—The accusation must therefore have been introduced for the purpose of creating local irritation, and leaving as they hoped an indelible stigma upon the characters of the accused, without their having a legal opportunity of meeting and confuting so infamous a charge. It is an extraordinary feature in the proceedings of the Assembly, that their *committee of the whole House*, and *special committee* were by their appointments limited in their enquiries “to the con-
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“ fideration of the power of the Courts relative to the
 “ Rules of Practice and to the principal points wherin
 “ they were repugnant to the laws of the land, and to
 “ report their opinion as to the course to be pursued for
 “ repressing such abuses of Judicial power.”

The special committee made a voluminous report which being concurred in by the House, it “ Resolved
 “ that a committee be appointed to prepare Heads of
 “ impeachment upon the said report, and resolutions a-
 “ gainst the two chief justices”—and then with an utter
 disregard of all precedent, a resolve is added, to give them
 additional power, not in regard to the subject matter of
 the previous investigation ; but without declaration or
 limitation of object, in those words, “ Resolved that the
 “ said committee have power to add *such heads of im-*
 “ *peachment as may appear just and proper* ; and that
 “ they have power to send for persons, records and papers.”

Thus to an enquiry, the professed purpose of which, embraced only matters, which if proved could amount merely to error in judgment ; is tacked a despotic authority, most tyrannically used, of adding, thereto, without previous enquiry or proof in the House, articles of impeachment, which were they proved before a competent tribunal, the lives and Estates of the accused would be the forfeit.

The heads of impeachment added in virtue of their despotic authority, not only violate decency and truth, but are on the very face of them impossible to have hap-

pened, can they be otherwise considered than as a species of libels upon the Governor and both councils, who are therein considered as if they were nonentities, and the Chief Justice as if possessing in his own person, the power of the whole Government.

But of all the accusations that which refers to the former news Paper called the "VRAI CANADIEN" is the most extraordinary, being a substitution of *effect* for *cause*, it being well known that its object was to counteract the poison infused into the minds of the people by a Junto who had previously established a news Paper called "LE CANADIEN" which was perpetually sowing dissension between His Majesty's new and old subjects, and which proceeded to such an extremity, that an insurrection was inevitable, had they not been arrested.—Tranquillity followed the arrest, and apparent contrition in some, for having gone so far, was manifested.

It may be urged further in proof of the want of real patriotism in the Leaders of the last assembly, that when the legislature was summoned to meet in July 1812, speedily after the declaration of war by the United States, and the Governor submitted to the assembly a private and confidential message (now printed in their journals) upon the perilous state of the Province, threatened as it was by immediate invasion; and stated that there was a necessity for strengthening the hands of His Majesty's Government—nothing was done thereon; although the practice of the mother country, and of all free countries in such emergencies, was to give additional powers to the

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Executive to meet the danger ; indeed common sense must point out, that the ordinary Powers of government are for ordinary occasions, and inadequate to the case of invasion.

Yet such was the apathy and indifference of the aforesaid leaders, that in the subsequent session, instead of meeting the Governor's views in his message, they passed Resolutions to tie up his hands (as far as they could) against the use of martial law, as if afraid of an extraordinary exertion being made against the enemy.—This conduct is the more remarkable as they have deprived themselves of every excuse for it, by the fair promises repeatedly made, and their frequent declarations of unbounded confidence in His Excellency's administration.

A trumped up accusation against the Chief Justice under pretence of his favoring American influence, comes with a bad grace, from men who would thus do nothing to counteract invasion ; and especially when in the same breath he is attacked as if he was the projector of Henry's mission, which they allege was to promotethe dismemberment of the union of the States.

In denying that such was the object of the mission, it may be permitted to add, that such in a British subject, would not have been a very deadly crime, to endeavor to weaken and divide those, who for years had evinced the most deadly hatred to his country ; who clearly were only watching a good opportunity for war against us, and who have since carried into effect their then hostile threats.

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This logick is doubtless a part of the new discovery made in that science by our patriots.

After this specimen, it would not have been surprizing if one of the articles of impeachment against the Chief Justice of Montreal had been, for traitorously giving counsel that tended to suppress the harmless insurrection at La Chine; and in so doing induced the enemy to believe us a divided people, whereby they were encouraged to persist in invading us; and by which wicked counsel, the attempts at invasion have been defeated.

Whatsoever faults Sir James Craig had, it was not one of them, to have been led by the nose by the opinions of any man—then why all this trumpery about *the Chief Justices* having given or not this or that advice.—

He is placed by his accusers on the horns of a dilemma, under the determination, that he shall not escape; for it is said that the leader in the impeachment, when asked by a member for some proof that the Chief Justice gave such and such traitorous advice; answered, that proof was useless, as he either did give the advice or if he did not, it was his duty to have advised the contrary—

It has been matter of surprise why the £4000—Judge hunting money, was not tacked to *the Army Bill Act*, instead of the *other act*, as being likely to be more effectual in compelling an acquiescence in that moderate and useful grant. The supposed reason is, that many of the members of the Assembly, who hold situations under go-
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vernment, were aware, that if the *Army Bill Act* fell through, they could not receive the pay attached to such situations.

A broad hint is given in the *Spectateur* of the 19th April last, that if the House of Assembly had been in session, they would have noticed the former production of *Aristides*. The present opportunity is therefore taken, to inform the *Spectateur*, and all others whom it may concern, That the Assembly about to meet, have no right whatsoever, upon any pretext of privilege or otherwise, to take cognizance of any thing, written or said, respecting any preceding House of Assembly.

Of this *Aristides* is so confident, that he would risk resistance to any attempt made against him or the publisher, by the next House, upon such illegal and indefensible grounds; but he cannot believe in the possibility of such an attempt, however gratifying it might be to the *Spectateur*, and other noisy mock patriots.

ARISTIDES.

Montreal, May 1, 1814.

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